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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,996	10/04/2000	Bernard Illy	33339/204662	4906

826 7590 06/04/2003

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER

WONG, LESLIE A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/04/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

ASB

Office Action SummaryApplication No.
09/678,996Applicant(s)
Illy et al.Examiner
Leslie WongArt Unit
1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 15, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16, 19, 21, and 22 is/are allowed.
- 6) ☒ Claim(s) 17, 18, and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). | 6) <input type="checkbox"/> Other: |

Art Unit: 1761

Claims 1-16, 19, 21, and 22 allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winton in view of Burt.

Winton discloses the conventional composition of cheese and ice cream where these amounts are the same as that claimed by Applicant (see pages 178-180 and 207).

The claims differ as to being molded and having a coating.

Burt discloses the production of a frozen dairy product where a mixture is cast, cooled, reheated, unmolded, dipped, and packaged (see entire patent).

It would have been obvious to a person of ordinary skill in the art, at the time in the invention was made, to use the coating and molding of Burt in that of Winton because the coating and molding of dairy products to provide strength and/or non-stick properties is conventional and well-known in the art.

The recitation that the product is made by a new process, if the process were indeed new and patentable, does not render an otherwise unpatentable product new and patentable. It is pointed out that claims 17, 18, and 20 are product claims and not process claims. The product must stand on its own invention, independently of the process of producing same. See In re

Art Unit: 1761

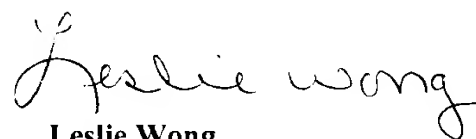
Marosi, 218 USPQ 195; In re Thorpe, 227 USPQ 964; Ex parte Jungfer, 18 USPQ 2nd 1976.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

Applicant's arguments with respect to claims 17, 18, and 20 have been considered but are moot in view of the new ground(s) of rejection.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday. The fax number for this Group is (703) 872-9310 for non-final responses and (703) 872-9311 for after-final response. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Leslie Wong
Primary Examiner
Art Unit 1761

LAW
June 2, 2003